

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FEB 1 1999

PATRICK FISHER
Clerk

MARK REX, BISSEN,

Plaintiff-Appellant,

v.

TIMOTHY TOWNS, Collection
Branch, IRS Automated Collection
System; GLENN L. STREBE, Vice
President of Finance, Air Academy
Federal Credit Union; CAROLYN L.
MARSALA, Accounting Supervisor,
Air Academy Federal Credit Union;
WILLIAM C. DUVEN, P.C., Attorney
at Law; WALTER A. HUTTON, JR.,
IRS District Director; and all DOES
1-99,

Defendants-Appellees.

No. 98-1227
(D.C. No. 97-B-1605)
(D. Colo.)

ORDER AND JUDGMENT *

Before **PORFILIO** , **BALDOCK** , and **HENRY** , Circuit Judges.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff filed a pro se action against two IRS employees, two credit union employees, and the attorney who represented the credit union for alleged constitutional and statutory violations arising out of seizure of property pursuant to a tax levy. The district court dismissed the action and granted the attorney's motion for reasonable attorney's fees as a sanction pursuant to Fed. R. Civ. P. 11. Plaintiff appealed.

After the parties had filed their briefs on appeal, plaintiff filed a motion to dismiss the appeal. We agree that the appeal should be dismissed, as it is "eminently frivolous." Smith v. Kitchen, 156 F.3d 1025, 1027 (10th Cir. 1997). "An appeal is frivolous when the result is obvious, or the appellant's arguments of error are wholly without merit." Braley v. Campbell, 832 F.2d 1504, 1510 (10th Cir. 1987) (quotation omitted) (en banc). After reviewing the record on appeal, the parties' briefs and the relevant case law, we believe that it was absolutely clear at the time plaintiff filed this appeal that it was without merit and that the result on appeal was obvious. Apparently, as represented by his motion

to dismiss, plaintiff also recognized that his appellate arguments are completely meritless and that an appeal would be fruitless.

Accordingly, plaintiff's motion to dismiss is GRANTED, and the appeal is DISMISSED. The mandate shall issue forthwith.

Entered for the Court

John C. Porfilio
Circuit Judge